The Commonwealth of Massachusetts

DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

D.T.E. 06-8 April 7, 2006

Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers.

ORDER OPENING A NOTICE OF INQUIRY
TO ESTABLISH RETAIL BILLING AND TERMINATION PRACTICES
FOR TELECOMMUNICATIONS CARRIERS

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I. INTRODUCTION

In this Order, the Department of Telecommunications and Energy ("Department") opens an investigation to update the retail Residential Billing and Termination Practices originally established in New England Telephone and Telegraph Company, D.P.U. 18448 (1977), that currently apply to Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") and the more than 148 competitive local exchange telecommunications carriers ("CLECs") now operating in the Commonwealth. In D.P.U. 18448, the Department, on its own motion, opened an investigation pursuant to G.L. c. 159, § 16, to respond to a specific set of consumer complaints against New England Telephone ("NET," now Verizon). The Department conducted an adjudicatory proceeding and issued an Order establishing "Rules and Practices Relating to Telephone Service to Residential Customers" ("Practices") that still apply to Verizon's local residential service. According to the Department's current requirements, CLECs must adopt identical, or nearly identical, billing and termination practices when they file their tariffs.[1] The existing Practices generally cover:

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[1] The current guidelines for CLECs state:

> Companies proposing to provide telecommunications services to presubscribed residential customers should refer to item 7 in this package which is a copy of D.P.U. 18448 - RULES AND PRACTICES RELATING TO TELEPHONE SERVICE TO RESIDENTIAL CUSTOMERS as a template in preparing their own billing practices, to be filed with the service provider's intrastate tariff. A company may revise certain terminology and rules, or

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customer information on rates and services; billing and payment standards; security deposits and guarantees; discontinuance of service and removal of accounts; complaints and disputed claims; deferred payment; and telephone service of elderly persons. The current Practices do not apply to interexchange carriers.

II. DESCRIPTION OF THIS PROCEEDING

A. Issues to be Addressed

The Department will review the Practices and will amend their customer protection provisions to match the current competitive marketplace. The Department has maintained a longstanding policy of promoting competition in the telecommunications industry in

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[1](...continued)

> request exemptions(s) from certain requirements, if such provisions, terms or rules, are not applicable, as long as the change(s) and/or exemption(s) are not considered by the Department to result in substantive changes in a residential customers' rights. These billing practices, along with the company's tariff, will then be individually reviewed by the Department. A company which is able to comply with all billing and collections practices as set forth in D.P.U. 18448 may choose to adopt such practices by including a statement to that effect in the General Regulations section of its tariff. An example of such a statement would be "The Company will comply with the Billing and Termination Rules as set forth in D.P.U. 18448." In such cases, there is no need to file specific billing and collection practices as an appendix to the company's tariff.

Doing Business as a Telecommunications Company in Massachusetts, § 3 (Rev. 7/03) (available at http://www.mass.gov/dte/telecom/73geninfo.pdf).

Thus, the current guidelines recognize that the Practices may need to be adapted to various carriers' circumstances. The Department has approved some CLEC tariffs that contain provisions that differ from these established in D.P.U. 18448. See, e.g., Broadview Networks, Inc., MDTE Tariff No. 1, Section 2.10.K, Page 52, effective October 31, 1999 (regarding elderly disconnection procedures).

Massachusetts. See Alternative Regulation Plan, D.T.E. 01-31-Phase I (2002), D.T.E. 01-31-Phase II (2003); Entry Deregulation, D.P.U. 93-98 (1994); AT&T Alternative Regulation, D.P.U. 91-79 (1992); Collocation, D.P.U. 90-206/91-66 (1991); AT&T-Customer-Specific Pricing, D.P.U. 90-24 (1991); MFS-McCourt, D.P.U. 88-229/252 (1989); Teleport Communications - Boston, D.P.U. 88-60 (1988); NET-Intellidial, D.P.U. 88-18-A (1988); Yankee Microwave, D.P.U. 87-201 (1988); NET-Centrex, D.P.U. 85-275/276/277 (1985); NET-Centrex, D.P.U. 84-82 (1984). In IntraLATA Competition Order, D.P.U. 1731, at 25 (1985), the Department determined that while simulation of the results of a competitive market is a principal goal of regulation, actual competitive telecommunications markets are preferable to relying on regulation as a surrogate for competition. As a result of this policy and of the evolution of a competitive market, today's telecommunications industry in the Commonwealth differs greatly from the industry of 1977 when the Practices were first established. At that time, NET was the only provider of local services, and AT&T was the monopoly provider of long distance service. Today, the intra- and interLATA toll markets, as well as the local exchange markets, are highly competitive, with numerous carriers competing in each market.

Accordingly, the Department seeks comments regarding updating and clarifying all provisions of the Practices, developing additional provisions or deleting existing provisions, as appropriate, and applying the Practices to all of the multiple carriers offering local residential service (i.e., Verizon and CLECs).[2] In addition, the Department will evaluate whether the

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[2] The Department has attached a list of questions for consideration by commenters.

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consumer protections afforded by the Practices should be applied to telecommunications services and providers not covered under the current Practices (e.g., in-state long distance service, pre-paid services, and service to small business customers (i.e., those with three lines or less) as well as to residential customers). The Department will consider whether it should require minimum consumer protections for voice service in Massachusetts, regardless of how that service is delivered, and to what extent the Department should expand the updated Practices to apply to emerging/alternative technologies (e.g., Voice over Internet Protocol ("VoIP"), wireless).[3]

In establishing an updated set of billing and termination practices for retail customers, the Department proposes to be guided by certain principles ("Guiding Principles"). These Guiding Principles are the following: customers must receive certain basic consumer protections from their telecommunications providers, even in a competitive market; customers must receive accurate information in order to make informed decisions on their behalf; customers must have adequate notice of any changes to the terms and conditions of their service; customers must have adequate time to take action where action is required, and some

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[2](...continued)
See Questions of the Department of Telecommunications and Energy on Retail Billing and Termination Practices for Telecommunications Carriers, attached hereto as Attachment I.

[3] See Commercial Mobile Radio Services, D.P.U. 94-73 (1994) (discussing extent of state jurisdiction over wireless services following federal preemption of state wireless entry and rate regulation); In the Matter of IP-Enabled Services, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, at ¶¶ 38-41 (2004) (opening rulemaking into regulatory classification of, and extent of state and FCC jurisdiction over, VoIP and other services and applications making use of Internet Protocol).

classes of customers may require additional time to act; the Department's mission is not to absolve any party of the consequences of its actions; the Department will continue to hold carriers and their customers responsible for the consequences of their own actions; and the Department will resolve disputes between carriers and their customers upon request.

To the extent possible, commenters should refer to the Guiding Principles just outlined when responding to the specific questions included in Attachment I. Commenters may also comment on or propose changes to these Guiding Principles, as appropriate. In conducting this proceeding, therefore, we invite comment both on updating the current Practices or establishing new Practices for local residential service, and on expanding the scope of the Practices to cover other telecommunications services, providers, and customers, as appropriate. The Department invites all interested persons and companies to file comments on the issues and questions attached to this Order. The Department also welcomes comments on related billing and termination issues that are not specifically mentioned herein.

B. Procedural Schedule

The Department adopts the following procedural schedule. The Department will accept initial written comments on the issues and questions identified in this Order no later than 5:00 p.m. on June 6, 2006. Reply comments will be due no later than 5:00 p.m. on July 10, 2006. The Department encourages the filing of joint comments and will give them due consideration in the development of our new Practices. Based on the comments received, the Department may establish a further procedural schedule to allow for additional questions and provide for technical sessions and/or hearings. The Department expects to distribute draft Practices for further comment.

III. ORDER

Accordingly, after due consideration, the Department hereby

VOTES: To open an inquiry in order to establish retail billing and termination practices for telecommunications carriers; and it is

ORDERED: That the Secretary of the Department shall serve a copy of this Order on each telecommunications company doing business in Massachusetts by mail; and it is

FURTHER ORDERED: That the Secretary of the Department shall serve a copy of this Order on all persons that have asked to be placed on a general notification list pursuant to 220 C.M.R. § 2.09.

By Order of the Department,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Paul G. Afonso, Commissioner

/s/
Brian Paul Golden, Commissioner

ATTACHMENT I

QUESTIONS OF THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY ON RETAIL BILLING AND TERMINATION PRACTICES FOR TELECOMMUNICATIONS CARRIERS

The Department seeks comment in this Notice of Inquiry proceeding on the following topics. Whenever possible, comments should clearly indicate to which issue(s) and question(s) they are responsive. All comments exceeding 20 pages in length must be accompanied by an executive summary of no more than three pages.

In addition to paper copies, please submit all filings, including comments, to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dte.efling@state.ma.us and andrea.saia@state.ma.us, or (2) on a 3.5" disk, IBM-compatible format. The text of the e-mail or the disk label must specify: (1) the docket number of the proceeding (D.T.E. 06-8), (2) name of the person or company submitting the filing, and (3) a brief descriptive title of the document. The electronic filing should also include the name, title and phone number of a person to contact in the event of a question about the filing. Text responses should be created in either Corel WordPerfect, Microsoft Word, or an Adobe-compatible PDF file. Data or spreadsheet responses should be compatible with Microsoft Excel. All comments submitted in electronic format will be posted on the Department's Web site: http://www.mass.gov/dte/. Current Practices, D.P.U. 18448, may be viewed on the Department's Web site at: http://www.mass.gov/dte/telecom/18448.pdf.

Guiding Principles

In establishing an updated set of billing and termination practices for retail customers, the Department proposes to be guided by certain principles ("Guiding Principles"). These Guiding Principles are: that customers must receive certain basic consumer protections from their telecommunications providers, even in a competitive market; that customers must receive accurate information in order to make informed decisions on their own behalf; that customers must have adequate notice of any changes to the terms and conditions of their service; that customers must have adequate time to take action where action is required, and that some classes of customers may require additional time to act; that the Department's mission is not to absolve any party of the consequences of its actions; that carriers and their customers are responsible for the consequences of their actions; and that the Department will resolve disputes between carriers and their retail customers upon request. To the extent possible, commenters should reference these Guiding Principles when responding to the following questions. Commenters may also comment on or propose changes to the Guiding Principles.

QUESTIONS OF THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY ON RETAIL BILLING AND TERMINATION PRACTICES FOR TELECOMMUNICATIONS CARRIERS

A. General Questions

1. What billing and termination or other consumer protection practices (e.g., service quality, privacy, marketing practices) are necessary for today's marketplace?

2. Are there certain issues for which specific requirements are needed and other issues for which general guidelines or range of parameters would be appropriate? Please identify any such issues, and explain why a specific requirement or general policy is more appropriate.

B. Scope of Rules

1. Should the new Practices apply only to certain types of carriers, (e.g., local exchange carriers ("LECs"), including incumbent as well as competitive facilities-based and resale LECs), or should the rules apply to other carriers regulated by the Department (e.g., cable)?

2. Rather than applying to specific carriers, should the new Practices apply to specific services (e.g., local exchange service, interexchange service, etc.)? If the proposed Practices were to apply to other service offerings of a LEC or CLEC, please identify any conflicts that would exist between the proposed Practices and any other state or federal regulations including, but not limited to, 207 C.M.R. § 10.00 et seq.? Please also address how the Practices should address bundled services.

3. To what extent should the Department expand the updated Practices to apply to emerging/alternative technologies (e.g., Voice over Internet Protocol ("VoIP"), wireless)? Should the Department require minimum consumer protections for voice service in Massachusetts regardless of how that service is delivered?

C. Customer Notice about Rates, Terms and Conditions

1. Should carriers be required to provide written information about service offerings, rates, and terms and conditions to current and prospective customers, including but not limited to available alternative payment options and payment assistance programs (e.g., payment arrangements, disconnection moratoria for the ill or elderly, the right to be heard on billing matters in dispute), and of the eligibility requirements and application procedure for each?

2. Should carriers be required to notify customers in advance of changes in their rates, terms and conditions of service, or changes in the ownership/control of the carrier, and, if so, what specific notice requirements should apply?

3. Should carriers be required to maintain their current DTE-approved tariff and pending tariff supplements on a publicly accessible website (e.g., on the carrier's website)?

D. Billing

1. Part 3 of the current Practices applies to residential customer bills. What requirements governing the billing process, including the format and frequency of customer bills should be included in the revised Practices?

2. Should the updated Practices allow bills to include separately itemized surcharges and, if so, should the updated Practices have different rules for surcharges carriers are required to itemize (e.g., surcharges for E911 or disabilities access), and surcharges carriers choose to itemize (e.g., surcharges imposed to recover local property tax)? Should the updated Practices specify the format of all surcharges and the explanatory information to be included in customer bills (i.e., a simplified format)? See In the Matter of Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket No. 98-170, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, FCC 05-55 (rel. March 18, 2005).

3. Should the updated Practices permit flexible billing frequency (e.g., establish a minimum billing period for all customers or establish different billing periods for different classes?) and, if so, should carriers and customers be allowed to agree to a different billing frequency?

4. Should carriers be allowed to render bills by means other than mailing (e.g., electronically via the Internet)?

5. Should the updated Practices address the situation where a carrier fails to bill a customer for service, or under-bills a customer for service and, if so, how far back in time should the carrier be allowed to back-bill (e.g., no more than six months from the date the initial error was discovered)? Should carriers offer customers a payment plan option for the same length of time as that of the under-billing?

6. Should the updated Practices address the situation where a carrier over-bills a customer and, if so, how should over-billing adjustments be handled (e.g., should the refund be made for the entire period of the over-billing or some other period of time)? Should interest be paid on the amount of the overcharge and, if so, how should the rate of

interest be calculated, and when and in what form should the amount of any overcharge be returned to the customer?

7. Part 3.5 of the current Practices requires carriers to prorate charges for installation, restoration, or reconnection of service. Should the updated Practices continue to mandate that certain charges be prorated, or should carriers have the flexibility to offer, or not offer, payment arrangements and/or deferred payment plans?

8. Part 3.6 of the current Practices specifies the manner in which Customer Protection Notices must be rendered, including the size of the font; inclusion of a tagline in Spanish, Portuguese, or other languages required by the Department, which highlights the importance of the notice and the need to immediately translate the notice. What modifications, if any, should be made to the requirements contained in this rule?

9. Should the updated Practices limit the types of rates and charges that can be placed on a customer bill (e.g., rates and charges for telecommunications services only)? Should the updated Practices contain provisions addressing billing of third-party charges and, if so, what should those requirements be and why?

E. Credit Requirements, Deposits, and Late Payments

1. What specific requirements concerning credit, deposits and late or deferred payments should be included in the updated Practices, if any?

2. What information should be made available to carriers in order that applicants establish their identity (e.g., social security number)?

3. Under what circumstances should a carrier be able to refuse to provide service, including local service, to an applicant for residential service (e.g., indebtedness to another carrier, repeated delinquencies, or poor credit risk) and, if service is refused, what recourse should the prospective customer have?

4. Part 4.5 of the current Practices caps deposits for new residential service accounts at $50, and deposits imposed as a condition of restoration of service or subsequent service at two times the average monthly bill. What deposit requirements should apply to new non-residential service accounts or to temporary or seasonal accounts as a condition of service and, are there any other circumstances under which a carrier should be allowed to require a deposit or advance payment?

5. How long should carriers be allowed to hold deposits and should carriers be required to pay interest on deposits?

6. Should carriers be allowed to assess a fee and/or interest for delinquent payment of a bill and, if so, how should those charges be determined and should certain exemptions apply?

7. Under existing Part 7, a deferred payment agreement may not include finance charges. Should the Department allow carriers to recover a reasonable finance charge on deferred payment agreements? Should the imposition of finance charges be limited to past due amounts relating to charges from long-distance service or enhanced services, such as call-waiting, caller ID or voice mail or, should finance charges apply to all services provided? How would finance charges apply to bundled packages that include long distance or enhanced services?

F. Termination of Service

1. Under the existing Practices, carriers are prohibited from disconnecting local service for non-payment of non-local charges, including third-party charges. In the revised Practices, should a similar provision apply when a customer receives a bundled package combining, for example, local, toll, video, and unregulated services, or when the carrier does not offer stand-alone local service?

2. Should written notice requirements apply to termination of service by carriers and, if so, what type of notice should be required? Should the Department permit carriers who provide electronic billing to their customers to provide notice of discontinuation through this same mode and, if so, how would such a process work?

3. Part 8 of the current Practices contains special provisions applicable to households in which all adult residents are 65 years of age or older ("elderly accounts"), which prevents carriers from disconnecting elderly accounts for non-payment without prior written approval from the Department. How should the updated Practices provide for disconnection protections for the elderly, if any?

G. Records Retention

1. What records and other customer information should carriers be required to maintain (e.g., records of deposits), if any, and for what period of time?

H. Billing and Service Disputes

1. Should the updated Practices identify a specific process by which a customer disputes a bill to the carrier or seeks resolution of a service problem?

2. Should small business customers (i.e., those with three lines or less) have the same rights to dispute a bill or seek resolution of a service problem as residential customers (e.g., recourse to the Department)?

I. Miscellaneous

1. Are there other miscellaneous requirements not covered in the above questions that should be addressed in the updated Practices (e.g., directory assistance, low-income discounts, programs providing telecommunications access to disabled persons, E-911)?